

ERIE COUNTY DEPARTMENT OF HEALTH CLEAN INDOOR AIR ACT WAIVER PROCESS

As you are aware, the Clean Indoor Air Act (CIAA), effective July 24, 2003, mandates nearly every workplace in the State of New York to be smoke-free. The Act aims “to prohibit exposure to second hand smoke by regulating smoking in all workplaces.”

Included in the CIAA is a provision, which authorizes the Erie County Department of Health (ECDOH) to review waiver applications. That same provision places an obligation on the ECDOH to ensure “that the waiver is consistent with the general purpose of the article.” Therefore, any waiver granted must conform with the intention of the law.

The merits of each waiver application will be considered individually. In order for the ECDOH to consider your waiver application, you must accurately and reliably demonstrate and/or provide the information below.

1. Compliance with the CIAA has resulted in an undue financial hardship OR other factor(s) exist that would render compliance with the CIAA unreasonable.
2. Establishment of an undue financial hardship will require demonstration of a precipitous, temporally related, and sustained reduction in New York State sales tax receipts of at least fifteen percent (15%) despite reasonable corrective measures and supported by other documentation including, but not limited to a reduction in beer, wine, liquor, and other alcohol purchases, a reduction in workforce, etc.
3. The claimed undue financial hardship must be clearly demonstrated to have been caused solely by enactment of the CIAA and all other external factors must be shown to be unrelated. Other factors might include, but are not limited to: a new like business established in the general vicinity, a change in operating hours, a change in operations, construction near the establishment, etc.
4. Applicants must submit exact copies of monthly New York State sales tax statements that were submitted to the State of New York and Federal Form 941 for the period of January 2001 through the end of the month prior to the date of this application. If the establishment has not been in existence since January 2001, exact copies of monthly New York State sales tax statements and Federal Form 941 since the commencement of operation should be submitted.
5. Applicants must provide a description of all efforts made to operate the facility profitably as a smoke-free environment.
6. It is imperative that applicants submit a plan consistent with all requirements and conditions included in Section F and/or G of this waiver application, and that clearly demonstrates how employees, patrons, and employees of other businesses (e.g., vendors, contractors) will continue to be protected from exposure to second-hand smoke if a waiver is granted.
7. Applicants must show in Section F and/or G of this waiver application how the business operation will be modified and/or new marketing strategies will be

- employed to enable conformity with the CIAA after the waiver expires. (The maximum waiver period is 365 days.)
8. An applicant claiming that other factor(s) exist that would render compliance unreasonable must include authoritative documentation outlining the factors involved, the unique circumstances, and the mitigation to ensure compliance with the CIAA so as to prevent involuntary exposure to second-hand smoke.
 9. Name of establishment and application section letter and question number must be included on all supporting documentation.

Enclosed you will find the Erie County Department of Health, Clean Indoor Air Act waiver application. Please return the application with a non-refundable payment of \$98.00 for plan review. Applicant is responsible to ensure that the application is complete. Incomplete applications will be returned without further review. Reapplications can be resubmitted along with a new plan review fee of \$98.

SUBMITTING THE APPLICATION:

Submit the completed application, the plan review fee and supporting documents to:

Erie County Health Department
95 Franklin Street - Room 906
Buffalo, New York 14202

Checks should be made payable to the Erie County Health Department

For additional information, please contact the Erie County Health Department at 858-6089.

ERIE COUNTY DEPARTMENT OF HEALTH CLEAN INDOOR AIR ACT WAIVER APPLICATION

Instructions

- All information provided as part of the application package must be either typed or printed clearly in ink
- The name of the establishment must appear and be the same on all supporting documentation submitted
- The waiver application must be signed and notarized where indicated by all owners, partners, corporation officers and principals.
- All applications must be accompanied by a non-refundable plan review fee of \$98.00 payable to the Erie County Health Department. Incomplete applications will be returned without further review. Reapplications can be resubmitted along with a new plan review fee of \$98.00.

NOTE: A waiver may be granted for a period not to exceed 365 days. Waivers will not be granted to establishments that began operation on or after July 24, 2003. All waivers are nontransferable. Waivers will not be granted to establishments found in violation of the Clean Indoor Air Act while this application is pending. Any waiver granted shall be subject to conditions and restrictions. Violation of any of these conditions and restrictions will result in automatic termination of the waiver. **Information provided as part of this application package may be subject to release under the New York State Freedom of Information Law.**

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SECTION A – Indicate with an “X” the basis for which waiver is sought:

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Undue Financial Hardship – Complete Sections A, B, C, D, F, G, H and submit required attachments

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Factor(s) That Would Render Compliance Unreasonable – Complete Sections A, B, C, E, F, G, H and submit required attachments

SECTION B – Complete Items 1 – 6 below:

1. Name of contact person: contact persons phone number:

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2. Name of Operator:

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(circle one) Corporation , LLC , Partnership, Individual, or Other _____

3. Name of establishment

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4. Building Number: Street:

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5. City: State: Zip Code: Telephone:

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Current hours of operation:

6.

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Close							

Hours of operation one year prior to the date of this application:

7.

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Close							

Section C - Complete Items 1 – 3 for all owners, partners, corporation officers, principals, and the like. Attach additional sheets if necessary. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION C.

1.

Last Name:	First Name:	Title:	
Building Number:	Street:	City:	State:
Zip Code:	Telephone:		

1.

Last Name:	First Name:	Title:	
Building Number:	Street:	City:	State:
Zip Code:	Telephone:		

2.

3.

1.

Last Name:	First Name:	Title:	
Building Number:	Street:	City:	State:
Zip Code:	Telephone:		

2.

3.

1.

Last Name:	First Name:	Title:	
Building Number:	Street:	City:	State:
Zip Code:	Telephone:		

2.

3.

SECTION D – Financial Factors

(Do not complete this section if filing for Other Factor(s) Hardship – SECTION E)

1. (A) **Attach exact copies of monthly sales receipt information submitted to the New York State Department of Taxation and Finance from January 2001 through the end of the month prior to the date of this application.** If the establishment has not been in existence since January 2001, submit exact copies of monthly New York State sales tax statements for the total period of operation. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D (1).

(B) Complete the following chart using the information provided in your monthly State sales tax statements. (Summary of 1(A) above)

TOTAL SALES	2001	2002	2003	2004
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
TOTAL				

2. (A) *If you do not report sales tax to New York State, explain why. **Attach other appropriate supporting documentation certified and signed by a CPA for the time period of January 2001 through the end of the month prior to the date of this application.*** If the establishment has not been in existence since January 2001, submit documentation certified by a CPA for the total period of operation. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D (2).

(B) Complete the following chart using the information provided in documentation prepared by your CPA. (Summary of 2(A) above)

TOTAL SALES	2001	2002	2003	2004
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
TOTAL				

3. (A) **If applicable, provide complete documentation regarding all beer, wine, liquor, and other alcohol purchases as would be reported to the New York State Liquor Authority upon request.** Documentation should include all invoices and proof of payment for said purchases. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D (3).

(B) Complete the following chart using the total monthly alcohol purchase information provided. (Summary of 3(A) above)

ALCOHOL PURCHASES	2001	2002	2003	2004
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
TOTAL				

4. (A) Provide monthly gross salaries as reported on Federal Form 941 for the period of January 2001 to the date of this application. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D (4).

(B) Complete the following chart using the information provided in your monthly gross salary statements. (Summary of 1(A) above)

GROSS SALARIES	2001	2002	2003	2004
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
TOTAL				

5. On July 1, 2003, the legal limit for blood alcohol concentration was reduced from 0.10 to 0.08. Provide documentation that your financial hardship has been caused by the CIAA rather than the reduction in the legal blood alcohol concentration. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D (5).

6. Since April 24, 2003 through the date of this application: (Circle Yes or No)

Has your establishment changed hours of operation?	Yes	No
Have you had any changes in operation including, but not limited to your chef, manager, wait or other staff?	Yes	No
Have you changed your prices?	Yes	No
Have you changed your menu?	Yes	No
Have you changed your target audience?	Yes	No
Have you remodeled or otherwise changed your facility?	Yes	No
Has there been an unfavorable public review of your facility?	Yes	No
Has adverse weather conditions ever affected your business?	Yes	No
Has there been construction in the vicinity of your establishment?	Yes	No
Has any like business opened or changed operations in the general vicinity?	Yes	No

If you answered yes to any of the above, please explain. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D (6).

7. Please explain why your financial hardship is directly related to the Clean Indoor Air Act and not other factors. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D (7).
8. Describe all efforts made to operate your business profitably as a smoke-free environment. Attach additional pages if necessary. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D (8).

SECTION E – Other Factors that would render compliance unreasonable

(Do not complete this section if filing for Financial Hardship – SECTION D)

Identify attached sheets with name of establishment and label as ATTACHMENT SECTION E

SECTION F – Plan and Separate Indoor Smoking Room Requirements and Conditions

Under the New York State Clean Indoor Air Act, every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure that the waiver is consistent with the general purpose of the Act. Thereby, applicants must provide a clear and detailed plan that is consistent with all requirements and conditions as outlined below, and that includes a reasonable strategy that will enable conformity with the CIAA after the waiver has expired.

- A dedicated indoor area that is totally isolated from all non-smoking areas by walls from floor to ceiling
- Area must be intended only for smoking and clearly marked as separate smoking room
- No one under 18 permitted in area
- Absolutely no service will be permitted in room
- Incidental drink can be brought into room by patrons only
- Employees as part of their work duties will not be allowed in room except prior to the opening of the facility or 30 minutes after it closes or smoking has ceased
- Plan must include method to remove garbage, glasses, and the like from area; clean spillage in the room; and handle other problems in the room without employee entrance or exposure
- Room can be no larger than 20% of total indoor public floor space of the establishment
- Room must be located so no employee or other person needs to enter the room to access any item or other area such as the toilet rooms, kitchens, entrances, dining rooms
- Room must be equipped with self-closing door(s) that is equipped with an alarm that will be activated if the door remains open for more than 60 seconds
- Door(s) must remain closed at all times except when entering or exiting
- Air from the room must be directly exhausted to the outside in sufficient volume as to create negative pressure within the room and the negative pressure must be maintained while door(s) to the room is open
- No air from room can be re-circulated to non-smoking areas
- Installation or modification of air handling system for room must not adversely affect non-smoking areas or any other building structure
- Room must have an adequate means of extinguishing fires
- Room must be in compliance with all local, State, and other codes, laws, and regulations
- The smoking room must be approved by the local fire inspector, the local building/code inspector/enforcement officer, and the business' underwriters insurance

Section G - Outdoor smoking area

- An outdoor area with an attached canopy or other covering (including heating devices if necessary) isolated from all non-smoking public areas will be considered
- Area must be intended only for smoking and clearly marked as separate smoking area
- No one under 18 permitted in area
- Absolutely no service will be permitted in area
- Incidental drink can be brought into area by patrons only
- Employees as part of their work duties will not be allowed in area except prior to the opening of the facility or after it closes or smoking has ceased
- Plan must include method to remove garbage, glasses, and the like from area; clean spillage in the area; and handle other problems in the area without employee entrance or exposure
- Area must have an adequate means of extinguishing fires
- The placement of the outdoor area can not be near entrances to the indoor area, be near windows or intake vents or in an other area so as to cause any second hand smoke exposure for the public, patrons of this facility or employees.
- The outdoor smoking area must be approved by the local fire inspector, the local building/code inspector/enforcement officer, and the business' underwriters insurance

For all indoor smoking rooms and/or outdoor area:

Applicant must indicate how the business operation will be modified and/or new marketing strategies will be employed to enable conformity with the CIAA after the waiver expires. (The maximum waiver period is 365 days.)

Submit a prepared drawing and plan that meets the design specifications and other requirements described above.

Identify attached sheets with name of establishment and label as ATTACHMENT SECTION F and/or G

Checklist of all required attachments:

1. Established businesses- Provide copies of NYS Department of Taxation and Finance Form ST-809 showing monthly sales receipts and Federal Form 941 from January 1, 2001, through the end of the month prior to the date of this application or similar monthly data certified by your CPA for the same time period.
2. Businesses not in operation since January 1, 2001 - the same documentation as described above must be submitted for the number of months in operation.
3. Copy of the current New York State Liquor Authority License (if applicable)
 - The license address must match the address of the establishment site. The license must be in the name of the individual owner, company, corporation, or principal partner.
4. Copy of a New York State Certificate of Authority to Collect Sales Tax **and** proof of Federal EIN:
 - The address on the New York State Certificate of Authority must match the address of the establishment site.

5. Copy of:

- If Individual Owner
 - Business Certificate of Ownership
- If Corporation
 - Proof of Incorporation
- If Partnership
 - Business Certificate of Partnership
 - Current partnership agreement

6. A design for the separate smoking room and/or outdoor area that is in compliance with the requirements in Section F and/or G.

7. Applicants must show in Section F and/or G of this waiver application how the business operation will be modified and/or new marketing strategies will be employed to enable conformity with the CIAA after the waiver expires. (The maximum waiver period is 365 days.)

Optional

If submitting employee data to demonstrate a significant reduction in staff, please provide: 1) Copy of your NYS Employer Registration for Unemployment Insurance, Withholding, and Wage Reporting, NYS-100; and 2) monthly copies of your NYS Labor Department Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns (NYS-45-MN and NYS-45-ATT-MN, if applicable) from January 1, 2001, through the end of the month prior to the date of this application.

The applicant may redact employer registration number, withholding identification number, and employee social security numbers from NYS-45-MN or NYS-45-ATT-MN forms. This is the only employee data that will be accepted.

NOTE: The Erie County Health Department reserves the right to request additional information necessary to make a final decision.

SECTION H - Acknowledgement and Certification

All owners, partners, corporation officers and principals identified in Sections B and C of this application must complete and submit this section. Please make additional copies as needed.

I, _____, state that I am the _____

of _____, and have reviewed the above application and that the statements made therein and the documents submitted are truthful to the best of my knowledge. I further acknowledge that I am fully aware of the consequences, including the forfeitures and civil and criminal penalties, which may result if any statement and document provided is determined to be false.

Dated: _____ Signature: _____

Sworn to before me this _____ day of _____, 200 ____.

Notary Public

SUBMITTING THE APPLICATION:

Submit the completed application, the plan review fee and supporting documents to:

Erie County Health Department
95 Franklin Street - Room 906
Buffalo, New York 14202

The application will be reviewed to ensure that all forms have been correctly completed and that all required documentation is submitted. If all required documentation is not provided, the entire application will be returned and the waiver will be considered denied. **THIS APPLICATION IS NOT A WAIVER.**